

CALIFORNIA GAMBLING CONTROL COMMISSION

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DATE: August 4, 2004

TO: Gambling Control Commission

FROM: Gary Qualset, Deputy Director
Licensing and Compliance Division

SUBJECT: Revenue Sharing Trust Fund Report of Distribution of Funds to Non-Compact Tribes for the Quarter Ended June 30, 2004

ISSUE: *Can the Gambling Control Commission (Commission) make a current quarterly distribution from the Indian Gaming Revenue Sharing Trust Fund (IGRSTF) to each eligible Non-Compact Tribe for the quarter ended June 30, 2004?*

The Commission, as administrator for the IGRSTF, is required to make distributions from the IGRSTF in accordance with the Tribal-State Gaming Compacts (Compacts) sections 4.3.2.1 (a) and (b).

The IGRSTF serves as the depository for payments made by Tribes that acquire and maintain gaming device licenses and interest income earned by the IGRSTF. The process for allocating licenses and the awarding thereof by the administrator is outlined in Section 4.3.2.2. This Section also specifies the amounts that shall be paid for license fees.

To date, the Commission has approved the distribution of approximately \$109.13 million in license fees, payments, and interest income from the IGRSTF covering fifteen fiscal quarters from July 1, 2000 through March 31, 2004. The current distribution being proposed will make a distribution of the actual amount of license fees received and any interest income that may have been deposited in the IGRSTF for the quarter ended June 30, 2004, leaving an undistributed balance of license fees, payments received, and interest income in the IGRSTF as of that date of less than \$1.00.

As shown in Exhibit 1, all eligible tribes will be receiving \$124,901.51 for this distribution. Total license fees of approximately \$8.72 million and interest earned of \$30,058.51 for the quarterly period ended March 31, 2004 and deposited in April 2004 into the IGRSTF for the quarter ended June 30, 2004 amounted to approximately \$8.75 million. A portion of the interest earned is allocated to previously approved distributions held in abeyance in the IGRSTF on behalf of two (2) tribes in the amount of \$9,618.87, therefore reducing the amount of funds recommended for distribution to \$8.74 million. Approved distributions are held if there is a tribal leadership dispute decision on appeal with the federal government. The remaining receipts are equally distributed to the seventy (70) tribes listed in Exhibit 1 as eligible Non-Compact recipient tribes (pending receipt of outstanding eligibility certification forms, if any). Thus, the equal share distribution amount per tribe for this quarter is as noted above.

On August 25, 2003, the Commission approved the report to the Legislature as required by Assembly Bill No. 673, Chapter 210, Statutes of 2003 (Government Code Section 12012.90). The bill authorizes the Commission to distribute funds transferred from the Indian Gaming Special Distribution Fund (IGSDF) to the Indian Gaming Revenue Sharing Trust Fund (IGRSTF) to eligible Tribes in accordance with Government Code section 12012.90. The report identified a likely overpayment in the amount of \$50,358.48 made to the Augustine Band of Mission Indians

for the quarter ended March 31, 2003, and accordingly the Commission withheld \$50,358.48 from distribution to that tribe. On April 28, 2004, the Commission determined that the withheld funds should be distributed to the tribes eligible to receive the fiscal year 2002–03 shortfall distribution and approved a supplemental distribution from the IGRSTF in the amount of \$50,358.48. Seventy-four tribes each received \$680.52. The amount was disbursed to all eligible tribes on June 2, 2004.

At the end of the calendar quarter for distribution and as of the close of business on June 30, 2004, the amount of outstanding license fee payments due into the IGRSTF was approximately \$1.84 million. If the total license fee payments due at the end of this quarter had been paid into the IGRSTF, recipient tribes would have received \$26,328.21 in additional moneys along with this quarter's distribution. The Commission makes quarterly distributions on a cash basis based on the amount of available funds in the IGRSTF for each quarter. Total outstanding and due license fee payments for the quarter ended June 30, 2004 are summarized in Table 1 below:

Table 1		
Indian Gaming Revenue Sharing Trust Fund License Fee Payment Aging Schedule as of June 30, 2004		
Quarter(s) in Arrears	Number of Tribes	Amount of License Fees Due
1	6	\$1, 700,325.00
2	1	142, 650.00
Totals	7	\$1,842,975.00

Compact Section 4.3.2.3 provides that a tribe shall not conduct any gaming activity authorized by the Compact if the tribe is more than two quarterly contributions in arrears in its license fee payments into the IGRSTF. The Commission, as administrator, sends out quarterly invoices for the payment of license fees near the beginning of each quarter. Additionally, the Commission follows standard collection practices, which includes noticing those of past due amounts, and has initiating procedures if action is needed under the provisions of Compact Section 4.3.2.3 noted above.

The distribution amounts for each tribe that are presented in the attached report are subject to audit and subsequent verification of eligibility by the Commission. In accordance with the Commission's methodology for determining a Non-Compact Tribe, it is also being recommended that this distribution be on a conditional basis pending receipt of certification of the maximum number of gaming devices operated during the quarter by each tribe that is required to submit a completed certification form. Tribes that are required to complete the certification form are those tribes that entered into Compacts with the State of California and have operated less than three hundred-fifty gaming devices during the entire quarter for this distribution.

Pursuant to Item 0855-101-0366 of the Budget Act of 2003, \$46 million was appropriated for distribution to Non-Compact tribes. Per Provision 3 of Item 0855-101-0366, the following items are requested according to control language as part of any request to augment Item 0855-101-0366. Although no augmentation is being requested with this distribution, we are submitting the following report information voluntarily.

1. The Methodology for Determining a Non-Compact Tribe

Per Section 4.3.2(a)(i) of the Compact, the term "Compact Tribe" and "Non-Compact Tribe" is defined as:

A "Compact Tribe" is a tribe having a compact with the State that authorizes the Gaming Activities authorized by this Compact. Federally-recognized tribes that are operating fewer than 350 Gaming Devices are "Non-Compact Tribes." Non-Compact Tribes shall be deemed third party beneficiaries of this and other compacts identical in all material respects. A Compact Tribe that becomes a Non-Compact Tribe may not thereafter return to the status of a Compact Tribe for a period of two years becoming a Non-Compact Tribe (sic).

For this distribution from the IGRSTF, the Commission used the following procedures as the methodology for determining if a tribe is a Non-Compact Tribe:

- A. Identify all tribes in the State of California that are Federally-recognized based on information obtained from the U. S. Department of Interior, Bureau of Indian Affairs, and a legal opinion received from the State Attorney General's Office.
- B. Request that each Non-Compact Tribe that entered into Compacts with the State that is to receive a distribution certify the maximum number of gaming devices operated during the quarter by completing and filing a Tribal-State Compact Gaming Device Certification Form (CGCC-C2003.04). Receive this form from each eligible tribe in accordance with the streamlined verification procedure implemented by the Commission. This form was mailed to Tribes for completion and filing and is also available on the Commission's website at www.cgcc.ca.gov.
- C. Classify all tribes identified in step A based on the information obtained in step B as either: 1) Compact Tribes operating 350 or more gaming devices, 2) Non-Compact Tribes as defined by the Compact, or 3) non-compacted gaming tribes.
- D. Classify all Non-Compact Tribes identified in part 2) of step C as eligible Non-Compact non-gaming tribes and Non-Compact gaming tribes that have submitted the requested certification form to the Commission if required.
- E. Prepare a list of Non-Compact Tribes based on the most recent information reported to the Commission.

2. A list of the Non-Compact Tribes Identified Based on the Commission's Methodology

A list of all Non-Compact Tribes as identified by the methodology identified in item 1 above is attached as Exhibit 1.

3. A Fund Condition Report Including the Amount of Revenue Received From Each Compact Tribe

A fund condition statement for the IGRSTF through June 30, 2004, for the fiscal year 2003-04 is attached as Exhibit 2. A listing of the amount of revenue from each Compact Tribe received by the Commission is attached as Exhibit 3.

4. The Amount of Funds to be Distributed to Each Non-Compact Tribe

The amount of funds to be distributed to each Non-Compact Tribe is listed in Exhibit 1 that is attached. The recommended distribution to each tribe listed in Exhibit 1 is subject to verification of eligibility and receipt of a Tribal-State Compact Gaming Device Certification Form (CGCC-C2003.04) If required.

RECOMMENDATION: *It is recommended that:*

1) the Commission approve distribution of the current full quarterly amount of approximately \$8.75 million of all payments made by tribes and any interest income received by the IGRSTF during the most recent quarter ended June 30, 2004, to the listed tribes that are determined to be eligible Non-Compact Tribes in accordance with the Commission's identified methodology for determining a Non-Compact Tribe as shown in Exhibit 1 attached to this report, and any interest accrued for previously approved distributions held in abeyance in IGRSTF but not immediately disbursed, and

2) approval of distributions shall be made on a conditional basis subject to receipt of any required eligibility certification of the maximum number of gaming devices operated during the quarter by each tribe that is required to submit a completed certification form.

Exhibit 1**Non-Compact Tribes Eligible to Receive a Distribution from the IGRSTF (Based on the Commission's Methodology) and the Amount of Funds Recommended for Distribution**

Non-Compact Indian Tribe	Amount of Funds Recommended to be Distributed
Alturas Indian Rancheria	\$124,901.51
Bear River Band of the Rohnerville Rancheria	124,901.51
Benton Paiute Reservation	124,901.51
Big Lagoon Rancheria	124,901.51
Big Pine Reservation	124,901.51
Big Sandy Rancheria	124,901.51
Bridgeport Paiute Indian Colony	124,901.51
Buena Vista Rancheria	124,901.51
Cahto Indian Tribe of the Laytonville Rancheria	124,901.51
Cahuilla Band of Mission Indians	124,901.51
California Valley Miwok Tribe	124,901.51
Cedarville Rancheria	124,901.51
Chemehuevi Indian Tribe	124,901.51
Cher-Ae Heights Indian Community	124,901.51
Chicken Ranch Rancheria	124,901.51
Cloverdale Rancheria	124,901.51
Cold Springs Rancheria	124,901.51
Colorado River Indian Tribes	124,901.51
Cortina Rancheria	124,901.51
Death Valley Timbi-Sha Shoshone Tribe	124,901.51
Elem Indian Colony	124,901.51
Elk Valley Rancheria	124,901.51
Enterprise Rancheria	124,901.51
Ewiiapaayp Band of Kumeyaay Indians	124,901.51
Federated Indians of Graton Rancheria	124,901.51
Fort Bidwell Indian Community	124,901.51
Fort Independence Reservation	124,901.51
Fort Mojave Indian Tribe	124,901.51
Greenville Rancheria	124,901.51
Grindstone Rancheria	124,901.51
Guidiville Rancheria	124,901.51
Hoopa Valley Tribe	124,901.51
Inaja-Cosmit Mission Indians	124,901.51

Exhibit 1 (Continued)**Non-Compact Tribes Eligible to Receive a Distribution from the IGRSTF (Based on the Commission's Methodology) and the Amount of Funds Recommended for Distribution**

Non-Compact Indian Tribe	Amount of Funds Recommended to be Distributed
Ione Band of Miwok Indians	124,901.51
Jamul Indian Village	124,901.51
Karuk Tribe of California	124,901.51
La Jolla Band of Mission Indians	124,901.51
La Posta Band of Mission Indians	124,901.51
Lone Pine Reservation	124,901.51
Los Coyotes Band of Cahuilla Indians	124,901.51
Lower Lake Rancheria	124,901.51
Lytton Rancheria	124,901.51
Manchester Point Arena Rancheria	124,901.51
Manzanita Mission Indians	124,901.51
Mechoopda Indian Tribe	124,901.51
Mesa Grande Mission Indians	124,901.51
Northfork Rancheria	124,901.51
Paiute Bishop Community	124,901.51
Pinoleville Rancheria	124,901.51
Pit River Tribe	124,901.51
Potter Valley Rancheria	124,901.51
Quartz Valley Indian Community	124,901.51
Quechan Tribe of Fort Yuma	124,901.51
Ramona Mission Indians	124,901.51
Redwood Valley Rancheria	124,901.51
Resighini Rancheria	124,901.51
Round Valley Indian Tribe	124,901.51
Santa Rosa Band of Cahuilla Mission Indians	124,901.51
Santa Ysabel Mission Indians	124,901.51
Scotts Valley Band of Pomo Indians	124,901.51
Sherwood Valley Pomo Indians	124,901.51
Shingle Springs Rancheria	124,901.51
Smith River Rancheria	124,901.51
Stewarts Point Rancheria	124,901.51
Susanville Indian Rancheria	124,901.51
Table Bluff Reservation	124,901.51
Torrez-Martinez Mission Indians	124,901.51

Exhibit 1 (Continued)**Non-Compact Tribes Eligible to Receive a Distribution from the IGRSTF (Based on the Commission's Methodology) and the Amount of Funds Recommended for Distribution**

Non-Compact Indian Tribe	Amount of Funds Recommended to be Distributed
Upper Lake Band of Pomo Indians	124,901.51
Washoe Tribe of Nevada & California	124,901.51
Yurok Tribe of the Yurok Reservation	124,901.51
Total	\$8,743,105.70¹

Footnotes:

1. The total amount of distribution to each tribe is subject to audit and verification by the Commission. Future distributions may be adjusted for any overpayments or underpayments that may have been made. If a tribe is subsequently determined to be a "Compact Tribe" by definition of the Compact, and is therefore not eligible for future distributions, any overpayments that may be made are subject to refund by a tribe(s) to the Commission. The above distributions are being recommended for distribution on a conditional basis and are subject to verification of eligibility. Distributions will only be made after receipt of a Tribal-State Compact Gaming Device Certification Form (CGCC-C2003.04) that indicates eligibility in accordance with the terms of the Compact.

EXHIBIT 2

CALIFORNIA GAMBLING CONTROL COMMISSION 0366 - INDIAN GAMING REVENUE SHARING TRUST FUND FUND CONDITION STATEMENT For the twelve months ended June 30, 2004 Cash Basis

BEGINNING BALANCE	\$ 7,964,705.55
REVENUES AND TRANSFERS	
Revenues:	
150300 Income from surplus money investments	156,551.91
216900 License fees held in trust	31,615,060.37
Transfer from the Indian Gaming Special Distribution Fund to IGRSTF for shortfall per Assembly Bill No. 673 (Chapter 210, Statues 2003) and Government Code Section 12090.90	<u>50,568,787.99</u>
Totals, Revenues	\$ <u>82,340,400.27</u>
Totals, Resources	\$ 90,305,105.82
EXPENDITURES	
Disbursements:	
Distribution	\$ 29,847,108.04
Fiscal Year 2002-03 shortfall distribution per Assembly Bill No. 673 (Chapter 210, Statues 2003) and Government Code Section 12090.90	49,560,268.70
Additional distribution or shortfall distribution pending resolution of tribal eligibility audit	<u>49,677.96</u>
Totals, Expenditures	\$ <u><u>79,457,054.70</u></u>
FUND BALANCE, prior to distribution	\$ 10,848,051.12
Disbursements, pending distribution	8,743,105.70
Assembly Bill No. 673 (Chapter 210, Statutes of 2003) and Government Code section 12090.90 reserve pending audit resolution	275,000.00
Previously approved funds and interest held on behalf of one (1) tribe for future issuance pending resolution of tribal leadership ¹	<u>1,829,945.36</u>
FUND BALANCE, after distribution	\$ <u><u>0.06</u></u>

Footnotes:

1. Held for Buena Vista Rancheria. Includes \$683,160.81 from fiscal year 2002-03 shortfall distribution per Assembly Bill No. 673 and Government Code 12012.90.

Exhibit 3**Amount of Revenue from Each Compact Tribe Received by the Commission Through June 30, 2004 for the Fiscal Year Ending June 30, 2004**

Compact Tribe	Revenue Received Fiscal Year to Date	Revenue Received Inception to Date
Agua Caliente Band of Cahuilla Indians	\$549,150.00	\$3,186,706.25
Alturas Indian Rancheria	187,500.00	187,500.00
Augustine Band of Mission Indians	0.00	437,500.00
Barona Band of Mission Indians	736,350.00	2,854,112.77
Bear River Band of the Rohnerville Rancheria	0.00	0.00
Berry Creek Rancheria	180,000.00	617,500.00
Big Sandy Rancheria	0.00	0.00 ²
Big Valley Rancheria	0.00	500,000.00
Blue Lake Rancheria	437,500.00	437,500.00
Buena Vista Rancheria	0.00	0.00 ²
Cabazon Band of Mission Indians	729,542.05	2,325,317.05
Cahto Indian Tribe of the Laytonville Rancheria	0.00	0.00
Cahuilla Band of Mission Indians	0.00	125,000.00
Campo Band of Diegueno Mission Indians	0.00	500,000.00
Chemehuevi Indian Tribe	0.00	0.00 ²
Cher-Ae Heights Indian Community	0.00	0.00
Chicken Ranch Rancheria	0.00	0.00
Colusa Rancheria	0.00	312,500.00
Dry Creek Rancheria	1,335,000.00	5,508,246.58
Elem Indian Colony	0.00	0.00
Elk Valley Rancheria	0.00	0.00
Ewiiapaayp Band of Kumeyaay Indians	678,061.19	2,437,433.22
Hoopla Valley Tribe	0.00	0.00
Hopland Band of Pomo Indians	153,008.57	1,309,258.57
Jackson Rancheria	721,377.22	2,052,627.22
Jamul Indian Village	0.00	0.00
La Jolla Band of Luiseno Indians	0.00	0.00
Manchester Point Arena Rancheria	0.00	0.00
Manzanita Band of Mission Indians	0.00	0.00
Middletown Rancheria	0.00	187,500.00
Mooretown Rancheria	0.00	625,000.00
Morongo Band of Mission Indians	0.00	497,300.00
Paiute Bishop Tribe	0.00	0.00
Pala Band of Mission Indians	3,075,000.00	12,687,534.25
Paskenta Band of Nomlaki Indians	31,250.00	437,500.00

Exhibit 3 (Continued)**Amount of Revenue from Each Compact Tribe Received by the Commission Through June 30, 2004 for the Fiscal Year Ending June 30, 2004**

Compact Tribe	Revenue Received Fiscal Year to Date	Revenue Received Inception to Date
Pauma/Yuima Band of Mission Indians	250,000.00	875,000.00
Pechanga Band of Mission Indians	142,650.00	1,034,505.62
Picayune Rancheria	2,205,000.00	6,541,469.18
Pit River Tribe	0.00	0.00
Quechan Indian Nation	0.00	0.00
Redding Rancheria	250,000.00	687,500.00
Resighini Rancheria	0.00	0.00
Rincon Band of Mission Indians	417,621.58	5,508,246.58
Robinson Rancheria	0.00	275,000.00
Rumsey Rancheria	1,994,911.92	3,677,411.92
San Manuel Band of Mission Indians	1,122,750.00	3,705,997.81
San Pasqual Band of Diegueno Indians	1,140,000.00	4,703,671.23
Santa Rosa Indian Community	2,544,300.00	10,497,851.51
Santa Ynez Band	1,644,375.00	5,427,789.04
Sherwood Valley Rancheria	0.00	0.00
Shingle Springs Rancheria	426,250.00	1,238,750.00
Smith River Rancheria	0.00	0.00
Soboba Band of Mission Indians	865,050.00	2,777,418.09
Susanville Indian Rancheria	0.00	0.00
Sycuan Band of Mission Indians	3,509,775.00	9,654,285.21
Table Mountain Rancheria	586,920.03	4,824,357.53
Tule River Reservation	248,499.04	1,613,499.04
Tuolumne Rancheria	425,000.00	737,500.00
Twenty-Nine Palms Band of Mission Indians	1,378,500.00	5,687,728.77
United Auburn Indian Community	3,332,625.00	5,332,527.33
Viejas Band of Mission Indians	317,093.77	2,434,768.77
Totals	31,615,060.37	114,461,313.54
Interest	156,551.91	3,457,475.78
Grand Totals	\$31,771,612.28 ¹	\$117,918,789.32

Footnotes:

1. See Exhibit 2 for a copy of a fund condition statement for the Fund for the quarter ended June 30, 2004, which is the most recent quarter-end for which a distribution has been recommended for payment.
2. Prepayment receipts were returned to payor tribes for the return of unused putative gaming device licenses issued by Sides Accountancy Corporation. Licenses in equal number were issued by the Commission on September 5, 2002 resulting in \$2,137,500 in prepayment fees to the Fund.